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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,383	12/21/2001	Tom K. Wentzel	KCC 4843 (KC# 15,400)	5427

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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 04/13/2004

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/032,383

Applicant(s)

WENTZEL ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-22, 24-35 and 37-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-22, 24-35 and 37-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2 – 12, 14, 16 – 18, 20 – 22, 24, 26 – 27, 29, 31 – 35, 37 – 42, 44 – 46, 49 and 51 – 58 are rejected under 35 U.S.C. 102(b) as being anticipated by Roessler et al. (US 5,383,872).

As to claims 2 – 3, 32 – 33 and 37 – 38, Roessler discloses the absorbent article as an incontinence product and a diaper as set forth in col. 4, lines 4 – 10.

Regarding claims 4 and 5, Roessler discloses the fastener in a generally rectangular shape as set forth in figures 1 – 2.

As to claims 6, 34 and 39, Roessler discloses the active fastening surface of the flexible material to be substantially covered by active fastening material as set forth in col. 6, lines 42 – 45.

Regarding claims 7, 35 and 40, Roessler discloses the active fastening material as a plurality of hooks as set forth in col. 6, lines 35 – 37.

Regarding claims 8 – 10, Roessler discloses an article with the claimed row configuration and density as set forth in col. 6, line 68 to col. 7, line 7.

As to claims 11, 26 and 44 Roessler discloses the fastener comprising an anchor end (30) and a user end (31) as set forth in figures 5 – 9.

With reference to claim 12, Roessler discloses both the anchor end and the user end comprising a generally rectangular shape as set forth in figures 1 – 2.

With respect to claims 14, 16, 29, 31, 49 and 51 Roessler discloses an absorbent article wherein the fastener has the claimed length and width as set forth in col. 7, lines 8 – 12.

Regarding claims 17 – 18 and 45 – 46, Roessler discloses an absorbent article wherein the anchor end of the fastener is affixed to at least one outside surface of the outer cover by adhesive bonding in a pattern of dots as set forth in col. 6, lines 5 – 19.

Regarding claims 20 – 22, Roessler discloses an absorbent article wherein the outer cover provides an active landing material and comprises at least one attachment panel in the form of loop material as set forth in col. 7, lines 48 – 66.

With reference to claims 24 and 42, Roessler discloses an absorbent article wherein the pair of ears (17, 18) comprises elastomeric material as set forth in col. 4, lines 46 – 51. The ears are an integral part of the inside liner sheet (figure 2) which may be formed of an elastic material.

With respect to claim 27, Roessler discloses an absorbent article wherein the anchor end of the fastener is reinforced with glue as set forth in col. 6, lines 42 – 45.

As to claim 41, Roessler discloses an absorbent article wherein the outer cover comprises a pair of ears (17, 18) as set forth in figure 1.

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With reference to claim 52, Roessler et al. (hereinafter "Roessler") discloses a disposable absorbent article comprising a first waist region, a second waist region, a crotch region extending longitudinally between the first and second waist regions (figure 2), the absorbent article being foldable generally within the crotch region to configure said article with first waist region in generally opposed relationship with second waist region (figure 10) and at least one fastener comprising a single piece of flexible material having an active fastening surface adapted for anchoring to said article generally at said first waist region and for fastening to said article generally at said second waist region to secure said article on a wearer as set forth in figures 5 – 9.

As to claim 53, Roessler discloses an absorbent article wherein the article has an inner surface (21) and an outer surface (11) with the fastener being adapted for anchoring to the outer surface of the article generally at the first waist region and for fastening to the outer surface at the second waist region to secure the article on the wearer as set forth in figures 1 – 2, 10 and 12.

Regarding claim 54, Roessler discloses an article further comprising a liner defining a liner defining the inner surface of the article, an outer cover in opposed relationship with the liner and defining the outer surface of the article, and an absorbent core between the liner and the outer cover as set forth in col. 4, lines 54 – 55 and in figure 2.

With reference to claim 55, Roessler discloses a disposable absorbent article comprising a first waist region, a second waist region, a crotch region extending longitudinally between the first and second waist regions (figure 2), the absorbent article

being foldable generally within the crotch region to configure said article with first waist region in generally opposed relationship with second waist region (figure 10), an outer cover (11), a pair of ears generally at the first waist region (17,18) and at least one fastener comprising a single piece of flexible material having an active fastening surface adapted for anchoring to said article generally at said first waist region and for fastening to said article generally at said second waist region to secure said article on a wearer as set forth in figures 5 – 9.

As to claim 56, Roessler discloses an absorbent article wherein the ears are formed integrally with the outer cover at the first waist region of the article as set forth in figure 1.

With reference to claim 57, Roessler discloses a disposable absorbent article comprising a first waist region, a second waist region, a crotch region extending longitudinally between the first and second waist regions (figure 2), the absorbent article being foldable generally within the crotch region to configure said article with first waist region in generally opposed relationship with second waist region (figure 10) and at least one fastener comprising a single piece of flexible material having an active fastening surface adapted for anchoring to said article generally at said first waist region and being secured thereto with adhesive (col. 6, lines 5 – 19), and for fastening to said article generally at said second waist region to secure said article on a wearer (figures 5 – 9), said fastener being secured to the article generally at the first waist region at least in part other than by said active fastening surface as shown in figure 8 where the fastener is bonded to the backsheet via adhesive (col. 6, lines 5 – 19).

Regarding claim 58, see the rejection of claim 57.

Claims 59 – 61 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuen (US 5,423,789).

With respect to claim 59, Kuen discloses a disposable absorbent article comprising a first waist region, a second waist region, a crotch region extending longitudinally between the first and second waist regions (figure 1), the absorbent article being foldable generally within the crotch region to configure said article with first waist region in generally opposed relationship with second waist region (figure 1) and at least one fastener comprising a single piece of flexible material (col. 5, lines 50 – 51) having a fastening surface configured for releasable attachment to the article at the first waist region and at the second waist region to secure the article on a wearer (56) as set forth in col. 5, line 62 to col. 6, line 23 and figure 1.

With reference to claim 60, Kuen discloses a disposable absorbent article wherein the at least one fastener is secured to the article at the first waist region at least in part other than by the fastening surface of the fastener as set forth in col. 7, lines 37 – 51.

Regarding claim 61, Kuen discloses a disposable absorbent article wherein the fastening surface of the at least one fastener comprises a plurality of hooks as set forth in col. 6, lines 37 – 50.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13, 15, 19, 25, 28, 30, 43, 47 – 48 and 50 rejected under 35 U.S.C. 103(a) as being unpatentable over Roessler (US 5,383,872).

The difference between Roessler and claim 15 is the provision that the anchor end of the fastener has a shear strength of greater than 3,000 grams tensile.

Roessler teaches the fastener to have a shear force of 6.60 – 20.0 psi in col. 8, line 17.

It would have been obvious to one of ordinary skill in the art to modify the shear strength of Roessler, if necessary, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering to optimum or workable ranges involves only routine skill in the art.

With reference to claims 15, 28, 30, 48 and 50, see the rejection of claim 13.

The difference between Roessler and claim 19 is the provision that the adhesive bead is less than about .25 inches in width.

Roessler teaches an adhesive bead with a width as set forth in col. 6, lines 12 – 14 and in figures 5 – 9.

It would have been obvious to one of ordinary skill in the art to modify the width of the bead, if desired, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering to optimum or workable ranges involves only routine skill in the art.

The difference between Roessler and claim 25 is the provision that the elastomeric material is a neck-bonded laminate.

Roessler teaches the elastomeric material as a spunbond or meltblown web in col. 4, lines 46 – 53.

It would have been obvious to one of ordinary skill in the art to provide a neck-bond laminate in place spunbond or meltblown web since the substitution of one elastomeric material for another requires only a level of ordinary skill in the art.

As to claim 43, see the rejection of claim 25.

Regarding claim 47, see the rejection of claim 19.

Response to Arguments

Applicant's arguments filed October 30, 2003 have been fully considered but they are not persuasive.

In response to applicant's argument regarding claims 52 and 55 that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., an active fastening surface which anchors to a first region and fastens to a second region) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the

specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The claim language states that the active fastening surface is adapted for (emphasis added) anchoring to the article generally at the first waist region.

It has been held that the recitation that an element is “adapted to” perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

The active fastening surface of Roessler is fully capable of performing the recited function.

With respect to the applicant’s arguments regarding claim 6, the applicant states on page 18 in line 5 that the references of record “completely any showing or suggestion of this feature.” The examiner presumes that the applicant intends to dispute the fact that Roessler discloses the claimed limitation.

In this event, and in response to the arguments pertaining to claims 34 and 39, Roessler discloses an active fastening surface (upper surface) of a flexible material (30) that is substantially covered by active fastening material (adhesive and/or hook material).

With reference to claim 10, applicant’s arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references or the rejection of record.

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Regarding the applicant's arguments pertaining to claim 57, Roessler discloses a fastener that is secured to the first waist region at least in part other than by the active fastener surface as set forth in figure 8. The active fastening surface is considered the hook portion (31). The fastener (30) is secured to the article at the first waist region (backsheet) in part other than by said active fastening surface (31) because the inner portions of the fastener utilize adhesive to bond the fastener to the first waist region of the article. (See figure 8). The applicant argues that there is no hook material adapted for anchoring to the back waist of the article. In addition to the fact that the "adapted to" language does not recite a positive limitation as previously stated, the examiner contends that the claim does not require such. The claim requires the fastener to be secured to the first waist region at least in part other than by the active fastening surface of the fastener. Roessler discloses the invention as claimed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
April 2, 2004


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